

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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PIEDMONT STATE BANK, et al.,)	
)	
Plaintiffs-Appellees,)	
)	
v.)	
)	
NATIONAL CREDIT UNION ADMINISTRATION,)	
)	
Defendant-Appellant,)	
)	
)	
NATIONAL ASSOCIATION OF FEDERAL CREDIT UNIONS,)	
)	
Defendant-Appellant,)	
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Nos. 96 - 5347
 96 - 5348
 96 - 5349
 96 - 5350
 96 - 5351
 96 - 5352

**APPELLANTS' MOTION, IN RESPONSE TO COURTIS MAY 23, 1997 ORDER, TO HOLD
PROCEEDINGS IN ABEYANCE PENDING SUPREME COURT DISPOSITION OF
NCUA v. FIRST NATIONAL BANK & TRUST CO.**

1. On July 30, 1996, this Court declared invalid the National Credit Union Administration ("NCUA")'s policy that interpreted the "common bond" requirement in 12 U.S.C. § 1759 to permit establishment of credit unions consisting of "multiple occupational . . . groups" so long as each group had its own common bond and was within the operational area of the credit union's offices. First National Bank & Trust Co. v. NCUA, 90 F.3d 525 (D.C. Cir. 1996). The Court remanded the case "for entry of declaratory and injunctive relief, consistent with the foregoing opinion, concerning the NCUA's 1989 and 1990 approvals of certain applications filed by [the AT&T Family Federal Credit Union]," id. at 531; and it denied rehearing on October 23, 1996. The NCUA, and intervenor-defendants AT&T, and Credit Union National Association, Inc. ("CUNAII) filed petitions for

certiorari from this decision on November 26 and 27, 1996. The Supreme Court granted certiorari on February 24, 1997. NCUA v. First National Bank & Trust Co., 117 S. Ct. 1079 (1997).

2. On October 7, 1996, while NCUA's rehearing petition was pending before this Court, the American Bankers Association and two other plaintiffs (collectively, "the ABA") filed a new action in district court seeking a temporary restraining order preventing the addition of new "select employee groups" to all federal credit unions, as well as barring the addition of new members to any existing such group. American Bankers Ass'n v. NCUA, No. 96-CV-2312 (TPJ) (D.D.C.). The district court consolidated this new action with the existing, remanded First National case.

On October 25, 1996, citing this Court's July 1996 decision, the district court issued an order preliminarily and permanently enjoining the NCUA and defendant-intervenors, CUNA and National Association of Federal Credit Unions ("NAFCU") (collectively "defendants"), from authorizing federal credit unions to admit members who do not share a single common bond of occupation. Memorandum and Order (Oct. 25, 1996) at 8. On October 31, 1996, the Court clarified that this injunction not only bars the NCUA from approving new select employee groups but also "bars credit unions from enrolling new members of existing occupational groups that do not share a common occupational bond with a credit union's core membership....." Memorandum and Order (Oct. 31, 1996) at 2-3.¹

3. Defendants filed the current appeals from the October 25 injunction on November 15, 1996, and November 19, 1996. On December 24, 1996, this Court granted a stay of that portion of the district court order barring credit unions from enrolling new members of previously approved employee groups pending appeal or disposition of the petitions for certiorari.

4. On May 23, 1997, the Court ordered the parties to submit "proposed formats for the briefing of these appeals" by June 23, 1997.

5. The pendency of the merits of this case before the Supreme Court weighs against proceeding further with this appeal until the Supreme Court renders its decision in NCUA v. First National Bank & Trust Co., 117 S. Ct. 1079 (1997). The Supreme Court in First National Bank & Trust

1 In this memorandum, we refer to these two orders collectively as "the October 25th order."

granted certiorari to determine whether banks have standing to enforce the FCUA's "common bond" requirement; and, if so, whether the NCUA reasonably interpreted the common bond provision to permit membership in a federal credit union to consist of multiple groups, so long as each group has its own common bond. Resolution of either of these issues in favor of the NCUA and the other defendants would completely dispose of the issues currently on appeal here. on the other hand, if the Supreme Court were to determine that banks had standing to enforce the common bond requirement and that the NCUA's interpretation of the requirement was invalid, the Court's opinion might provide guidance that would affect the issues to be decided by this Court. For these reasons, appellants believe that the proceedings here therefore should be held in abeyance pending resolution of the First National Bank & Trust case in the Supreme Court.

6. In the event that the Supreme Court's decision does not fully dispose of the issues on this appeal, the appellants propose that CUNA and NAFCU will file joint briefs but that, because of the NCUA's unique responsibility for implementation of the FCUA, and because attorneys for the United States have sole authority to file briefs on behalf of the federal sovereign, that the United States be permitted to file a separate brief up to the word limit provided by Local Rule 28(d). The United States agrees, however, that it will attempt to coordinate with the private appellants to keep our presentations concise and to avoid duplication.

CONCLUSION

For the foregoing reasons, the parties jointly request that the Court hold all proceedings in this case in abeyance pending the Supreme Court's final disposition of NCUA v. First National Bank & Trust Co.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 23d day of June, 1997, I served the foregoing Appellants' Motion, in Response to Court's May 23, 1997 Order, to Hold Proceedings in Abeyance Pending Supreme Court Disposition of NCUA v. First National Bank E, Trust Co. by causing two copies to be mailed, postage prepaid, to:

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